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v.

SOCIAL SECURITY ORGANISATION (SOCSO) & ANOR.

HIGH COURT MALAYA, SHAH ALAM
DATO' JAMES FOONG J
[CIVIL NO. 22-220-1992]
29 NOVEMBER 1994

ADMINISTRATIVE LAW: *Claim for disability benefits under Employees Social Security Act 1969 - Dismissal of claim by both Medical Board and appellate Medical Board - Whether Court has jurisdiction to decide on dispute - Sections 15(a), 16, 17, 84(1)(e), 84(2)(f), 84(4), 84(5) Employees' Social Security Act 1969.*

CIVIL PROCEDURE: *Pleadings - Facts to support alleged cause of action not stated - Whether plaintiff adduced evidence relevant to cause of action - Whether case proved.*

The plaintiff was an employee of Port Klang Authority, the 2nd defendant. A Medical Board constituted under the Civil Service General Orders Chapter F medically boarded the plaintiff out on grounds of incurable, permanent invalidity on 30 October 1985. The plaintiff then applied to the Social Security Organisation (SOCSO), the 1st defendant for disability benefits under the SOCSO Act. A second Medical Board constituted under the SOCSO Act recommended on 17 October 1986 that the plaintiff's claim be dismissed by reason that the plaintiff could work as a clerical person in any other company in a similar situation and as such does not qualify for invalidity pension under the SOCSO Act. An appeal to an appellate Medical Board constituted under the SOCSO Act was dismissed on 16 December1987.

In the statement of claim, the plaintiff claimed against the 1st defendant a declaration that the first medical board's decision on 18 September 1985 entitled the plaintiff to invalidity pension under s. 17 of the SOCSO Act. Against the 2nd defendant, the plaintiff claimed arrears of salary and alternatively, a declaration that the termination of the plaintiff's service was null and void.

The 1st defendant argued that the finding of the first Medical Board could not bind them as both the medical boards were differently constituted and applied different criteria. Another issue raised by the 1st defendant was that the Court had no jurisdiction to hear and decide on the plaintiff's claim as s. 84(2)(f) provided that the plaintiff's claim for benefits shall be decided by a Medical Board and under s. 84(4) and s. 84(5), no civil Court had jurisdiction to decide such a dispute.

The 2nd defendant argued that the plaintiff had not pleaded sufficient facts nor adduced sufficient evidence to support the alleged cause of action.

Held:

[1] The two Medical Boards were constituted under different laws and applied different criteria. The first Board's function was to determine whether it was in the employer's interest to keep the patient in service or not, looking also at productivity. Section 16 SOCSO Act applied to the second Board i.e. to decide whether the patient has a disability that is permanent which incapacitated him to a degree requiring medical attention and whether, if capable of being employed in gainful activity, the income he would derive is less than 1/3 of what he was drawing at that time.

When two different sets of principles are applied to a similar set of situation, the result may not be identical. Even though 2 doctors sat on both boards, they wore different hats and applied different principles. Therefore, the findings of the Medical Board cannot bind the 1st defendant.

[2] Since the plaintiff's claim for benefits fell to be decided by the Medical Board by virtue of s. 84(2)(f) and s. 84(1)(e), the Court had no jurisdiction to decide or deal with the dispute by virtue of s. 84(4) and s. 84(5) SOCSO Act 1969.

[3] No particular facts are stated in the plaintiff's statement of claim to support what cause of action the claim against the 2nd defendant is based on. Since the cause of action in the claim is basically that of incorrect findings by the first Medical Board, the Court has to consider whether the said findings are correct and has jurisdiction to do so. Other than the contention of the second Medical Board, no other evidence was adduced by the plaintiff to challenge the findings of the first Medical Board. He had in fact accepted its findings and also accepted all gratuity and benefits due to him.

[4] Though the plaintiff introduced evidence that the 2nd defendant breached the General Service Orders 1/65, this factual ground was not pleaded in his statement of claim and caught the defendant by surprise. The plaintiff failed to prove its case against the 2nd defendant.

[Plaintiff's claim dismissed]

Cases referred to:
Che Noh bin Yacob v. Seng Hin Rubber (M) Sdn. Bhd. [1982] 1 MLJ 80 ***(foll)***

Legislation referred to:
Employees' Social Security Act 1969, ss. 15(a), 16, 17, 84(l)(e), (2), (f), (4), (5)

Other sources referred to:
Administrative Law of Malaysia & Singapore, Professor Jain's, p. 157

For the plaintiff - Shahul Hameed Amirudin; M/s. Gomez & Assoc.
For the 1st defendant - P Bernard; M/s. Kadir Tan & Ramli
For the 2nd defendant - Shahariz Syed Hussain; M/s. Abdullah & Zainudin

JUDGMENT

James Foong J:

The plaintiff was an employee of the second defendants until he was medically boarded out by the second defendants on 30 October 1985. This was pursuant to a finding dated 18 September 1985 made by a Medical Board (hereinafter referred to as the first Medical Board) constituted by the second defendants. Consequent to this, the plaintiff applied to the first defendants for disability benefits under the Employees' Social Security Act 1969 (SOCSO Act in short). As a result of this application, another Medical Board (hereinafter referred to as the second Medical Board) was constituted, and on 17 October 1986, this second Medical Board recommended the plaintiff's claim be dismissed for the reason that he did not qualify to be a person entitled to invalidity pension benefits in accordance with the provisions of the SOCSO Act. The plaintiff then apealed against this recommendation to an appellate Medical Board which was constituted under the SOCSO Act and Regulations made thereunder. On 16 December 1987 this appellate Medical Board dismissed the plaintiff' appeal and confirmed the recommendation of the second Medical Board thus resulting in the plaintiff receiving no benefits under the SOCSO Act. These are the circumstances leading to this litigation before this Court.

In the plaintiff's statement of claim, the following are prayed for:

against the first defendant:

(1) for a declaration that by virtue of the Medical Board (1st Medical Board) decision on the 18 September 1985 obtained by the second defendants that the plaintiff is suffering from invalidity which is deemed to be of permanent nature, incurable and is not likely to be cured and in reliance of which the second defendants terminated the plaintiff's services, is within the meaning of the provisions under s. 16 of the Employees' Social Security Act, 1969 (SOCSO Act) entitling the plaintiff to receive invalidity pension pursuant to s. 17 of the Employees' Social Security Act, 1969 (SOCSO Act):

(2) for a determination that the first defendants are bound by the Medical Board (1st Medical Board) convened by the second defendants on 18 September 1985;

alternatively against the second defendant:

(i) for an order that the second defendants do pay to the plaintiff said sum of RM51,768.75 (as calculated in the particulars which are, mainly salary from the date of the plaintiff's termination of service with the second defendants until the date he was officially supposed to retire deducting the gratuity he received)

(ii) alternatively, for a declaration that the termination of the plaintiff by the second defendants, on medical grounds is null and void and of no effect, that the plaintiff is still a senior Clerical Officer of the second defendants entitled to all wages benefits and seniority, effective from 30 October 1985 (the date the plaintiff's services with the second defendants was terminated).

As can be seen from the above, the plaintiff's main claim against the first defendant is for invalidity pension under the SOCSO Act, which according to him should be based on the findings of the first Medical Board, and to be accepted by the first defendants.

The findings of the first Medical Board whose members were Dr. E Peters and Dr. Dorairaji were as follows: that the plaintiff is suffering from

> Recurrence of Inguinal Hernia (Direct) with weak lower abdominal wall musoulative. Patient is reluctant to have surgery in view of the past failure.

And that:

(a) the injury is permanent

(b) and this causes him not being able to carry out his duty as Senior Clerical Officer and that the patient be recommended to be medically boarded out.

Relying on these findings, the plaintiff submitted that this should be sufficient to qualify him for entitlement of invalidity pension under the SOCSO Act.

Section 15(a) of the SOCSO Act provides that an insured person (there being no dispute from all parties that the plaintiff is one), shall be entitled to:

> periodical payments to an insured person in case of invalidity certified by a duly appointed Medical Board or by an authority specified in this behalf by the regulations (hereinafter referred to as invalidity pension).

In order to be considered as suffering from "invalidity", s. 16 of the SOCSO Act provides as follows:

16.(1) An insured person shall be considered as suffering from invalidity, if, by reason of a specific morbid condition of permanent nature, he is incapable of engaging in any substantially gainful activity.

16.(2) For the purposes of subs (l) -

(a) a morbid condition shall be deemed to be of permanent nature if it is either incurable or is not likely to be cured;

(b) a person shall be deemed to be incapable of engaging in substantially gainful activity, if in consequence of the specific morbid condition of sickness or infirmity, he is no longer capable of earning, by work corresponding to his strength and physical ability which, in view of his training and former occupation, might reasonably be assigned to him at the place of his employment or at a similar place in the neighbourhood or in the same district, one-third of the customary earnings of a mentally and physically sound person with similar qualifications and training;

(c) in determining whether the claimant is suffering from invalidity, account shall be taken of any permanent improvement of the state of his invalidity which results or is expected to result from such measures of physical or vocational rehabilitation as may be offered to him free of charge by the organisation.

The first defendants argued that the findings of the first Medical Board cannot be binding on them since it is differently constituted, and the criteria applied by the first Medical Board were different from those considered by the second Medical Board.

The first Medical Board was constituted under General Orders Chapter F (Laporan Perubatan Perintah Am) Bab F. This Government Civil Service General Order (hereinafter referred to as General Service Orders) was adopted by the second defendants as the second defendants were a statutory body. According to DWI, Dr. Peters who was a member of the first Medical Board, the principles applied by this Board in evaluating the plaintiff's medical condition were:

> to determine whether it is in the interest of the employer to keep patient in service or whether it is better off that he is out rather than in service. This is based also on the question of productivity.

However, the second Medical Board's criteria were different. These are spelled out in s. 16 of the SOCSO Act itself. DWI, who also sat as a member of the second Medical Board summarised in brief the principles applied which were:

> whether the patient has disability that is permanent which incapacitated him to a degree that he will require medical attention, and secondly whether if he is capable of being employed in gainful activity, the income he would derive is less than 1/3 he was drawing at that time.

Based on these principles, according to DW1, "we find that the plaintiff can work as a clerical person in any other company in a similar situation. As such he does not qualify for invalidity pension" under the SOCSO Act.

It is only obvious that when 2 different sets of principles are applied to a similar set of situation, the result may not be indentical. As in this case, the plaintiff was medically boarded out by the first defendants because his injury was of a permanent nature causing him, "not being able to carry out his duty as a Senior Clerical Officer" in the second defendant' establishment. To arrive at this conclusion, the productivity factor was considered. This must be appraised in the context of the type of business and activities the second defendants were engaged in. The second defendants were and are port operators and managers and according to the plaintiff's testimony, during his employment with the second defendants he was required to walk substantial distance in the wharfs and godowns of the second defendants' port area. This obviously had affected him and was a major factor leading to the conclusion of the first Medical Board. These circumstances can only apply in the case of the plaintiff's employment with the second defendants. They are not of general application, for the plaintiff can work in another organisation which does not involve physical movement. This therefore, in the opinion of the second Medical Board does not entitle the plaintiff invalidity pension under the SOCSO Act. In order to qualify, the plaintiff's injury must not only be of a permanent nature, but his condition must be such that:

> he is no longer capable of earning by work corresponding to his strength and physical ability which, in view of his training and former occupation, might reasonably be assigned to him at the place of his employment or at a similar place in the neighbourhood or in the district, one-third of the customary earnings of a mentally and physically sound person with similar qualifications and training.

Besides, the second Medical Board was formed under the SOCSO Act while the first under General Service Orders. Although Dr. Peters and Dr. Dorairaji sat on both Boards, they wore different hats and applied different principles. Under these circumstances, this Court is unable to accept the plaintiff's proposition that the first Medical Board should be binding on the first defendants.

At the onset of this hearing, the first defendants' Counsel raised an objection that this Court has no jurisdiction to hear the plaintiff's claim against the first defendants. He based his claim on the provision of s. 84 subs (4) and (5) of the SOCSO Act which reads as follow:

> Section 84(4)
>
> No Civil Court shall have jurisdiction to decide or deal with any question or dispute mentioned in subs (1) and (2) (of s. 84) or to adjudicate on any liability which by or under this Act is to be decided by the Board.
>
> Section 84(5)
>
> No Civil Court shall have jurisdiction to decide or deal with any question or dispute which by or under this Act is to be decided by a Medical Board or by an appellate Medical Board.

In reply, the plaintiff's Counsel submitted that the circumstances of this case do not fit into any of the situations mentioned in s. 84 subs (1) of the SOCSO Act or within any claims stated in s. 84 subs (2) of the same Act.

After careful perusal of these sections, this Court finds it strange that the plaintiff's Counsel has not considered s. 84 subs (1)(e) of the SOCSO Act as applicable to the circumstances of this case. This section reads as follows:

> Section 84(1)(e)
>
> If any question or dispute arises as to - the right of any person to any benefit and as to amount and duration thereof;

The nucleus of the plaintiff's claim against the first defendants' denial of his rights to an invalidity pension which involves amount and the duration for the purposes of calculation. Invalidity pension is a "benefit" under the SOSCO Act and this being the case, will fall exactly within the situation described in s. 84(1)(e) of the Act.

Other categories described in s. 84 subs (2) of the SOSCO Act may not have relevance but subs (2)(f) contains precisely what the plaintiff is claiming. Under these circumstances, this Court finds that it has no jurisdiction to determine the plaintiff's claim against the first defendants.

Besides the above, this Court also finds its jurisdiction excluded by virtue of s. 84 subs (5) of the SOSCO Act which reads as follows:

> Section 84(5)
>
> No Civil Court shall have jurisdiction to decide or deal with any question or dispute which by or under this Act is to be decided by a Medical Board or by an appellate Medical Board.

The claim before this Court against the first defendants involves question and disputes decided by the second Medical Board or its appellate division which were constituted under the SOSCO Act. As clearly defined in this subsection itself, this Court being by nature a civil Court, has no jurisdiction to investigate into the findings of the Medical Boards, as the questions and disputes are within the exclusive confines of the Medical Board and its appellate arm. This view is adopted by the Federal Court in the case of *Che Noh bin Yacob v. Seng Hin Rubber (M) Sdn. Bhd.* [l982] 1 MLJ 80 at p. 82, where Hashim Yeop Sani J (as he then was) by way of *obiter* accepted Professor Jain's statement in his book on the *Administrative of Malaysia & Singapore* at p. 157, where he said:

> No Civil Court has any jurisdiction to decide any question which falls within the purview of the Board.

In the course of trial, the plaintiff alleged that the second Medical Board which carried out a medical examination on the plaintiff was held on 31 January 1986, consisting of Dr. Peters, Dr. Jeya and Dr. Paramjit. However, when this Board delivered its findings at a second medical examination held on 17 October 1986, Dr. Paramjit was absent and he was substituted by Dr. Dorairaji. This Court presumed that this issue was highlighted for the purpose of inferring that the second Medical Board was not properly constituted.

Before going into the legal aspect of this allegation, both Dr. Peters and Dr. Jeya have denied that there was a medical examination with the plaintiff on 17 October 1986. From the records produced and the evidence adduced, this Court finds no supporting evidence that Dr. Paramjit was present in the medical examination held on 31 January 1986 or that he was involved in the delivery of the Medical Boards' decision on 17 October 1986. All evidence led to only one conclusion, and that is the panel of the second Medical Board consisted of only Dr. Peters, Dr. Jeya and Dr. Dorairaji.

As for the legal aspect of this allegation, this Court finds that it has no relevance to the prayers stated in the plaintiff's statement of claim. There is no legal nexus between this assertion and the relief and remedy sought by the plaintiff. If the plaintiff wishes to declare that the second Medical Board was improperly contituted then, there should be a prayer to this effect. However, there is no such relief sought in this case. In any event, if there is, it may not succeed in view of the exclusion of this Court's jurisdiction over such matters under s. 84(5) of the SOSCO Act.

As for the plaintiff's claim against the second defendants, it is for a sum of RM51,768.75. No particular facts are stated in the plaintiff s statement of claim to support what cause of action this claim is based on. The only reference which this Court can find some connection to support this claim is para 13 of the plaintiff's statement of claim. It refers to a letter of demand by the plaintiff's then solicitors insisting on the reinstatement of the plaintiff to his former appointment with the second defendants. This letter (inserted as p. 36 of the Agreed Bundle of Documents) contended that the plaintiff should not have been medically boarded out by the first defendants since the second Medical Board constituted by the first defendants has ruled that the plaintiff was "not an invalid." This therefore must have been the basis of the plaintiff's cause of action for this specified sum.

The second defendants denied this allegation, and persisted on the fact that the plaintiff was lawfully boarded out on the recommendation of the first Medical Board in accordance with the rules as set out in General Service Orders 1/82. A copy of this General Service Orders 1/82 is included in the Agreed Bundle of Documents. Also included in this Agreed Bundle is a copy of the findings of the first Medical Board, and the letter of termination of the plaintiff's appointment by the second defendants based on the recommendation of the first Medical Board.

Since the cause of action of the plaintiff in this claim is basically that of incorrect findings by the first Medical Board leading to the plaintiff being medically boarded out, the only issue for this Court's consideration is whether these findings of the second Medical Board are correct. Unlike the findings of the second Medical Board, which this Court has no jurisdiction to examine under s. 84(5) of the SOSCO Act, there is no legal enactment to restrict the power of this Court to examine the findings of the first Medical Board, which was constituted under General Service Orders. Nonetheless, in order for the plaintiff to succeed under this claim, he must prove that the findings of the first Medical Board are incorrect. Except for the contention that the second Medical Board had declared that the plaintiff was not an invalid, there is no other evidence adduced by the plaintiff to challenge the findings of the first Medical Board as being wrong. In fact, the plaintiff has accepted its findings and had not complained or protested to the second defendants for being medically boarded out. He had accepted from the second defendants all the gratuity and benefits due to him. It was only after more than 21/2 years later, when the plaintiff failed to secure invalidity pension from the first defendants that he conjured this allegation against the second defendants. In any event, it has already been decided that the difference in the two findings of the two Medical Boards were due to the different criteria and principles applied. This does not mean that the findings of the second Medical Board of the plaintiff do not qualify the plaintiff to be medically boarded out by the second defendants based on the findings of its own first Medical Board. For these reasons, this Court finds the plaintiff's claim for RM51,768.75 must be dismissed.

In the course of the trial, the plaintiff began to introduce evidence to indicate that the second defendants have failed to comply with one General Service Orders 1/65. This, according to the plaintiff, required the second defendants to refer the first Medical Board's findings to a Standing Committee set up by the second defendants. This Standing Committee normally consisted of the chairman and 2 other board members of the second defendants. If the findings and recommendation of the first Medical Board were accepted, this Standing Committee would have issued to the plaintiff a letter of termination. The letter of termination issued to the plaintiff in this case was by the second defendants' General Manager. This therefore is a breach of this General Service Orders 1/65, and would entitle the plaintiff to be either reinstated or entitled to all arrears of salaries and benefits as if he was in service until his official retirement.

These are certainly factual grounds but they are not pleaded anywhere in the plaintiff's statement of claim, directly or indirectly. The introduction of such matters has certainly caught the second defendants by surprise as they could not traverse upon it in their defence. There were no applications made for any amendment to include this factual allegation. Such being the case, this matter has no relevance to the plaintiff's cause of action and cannot be considered by this Court. Further, no attempts were made by the plaintiff to

tender a copy of these General Service Orders 1/65 into Court as an exhibit. Though PW2, a former Assistant General Manager of the second defendants did testify to existence of such a practice as alleged by the plaintiff, to claim that a breach of this General Service Orders would tantamount to the wrongful dismissal of the plaintiff, must certainly require a careful examination of the contents of these Orders. Without it, this Court is unable to consider its effect and implication. Since the plaintiff has to prove his case, failure on his part to tender this significant document is detrimental to his claim on this point.

As for the plaintiff's alternative claim against the second defendants for reinstatement, this Court finds no merits for this contention. The second defendants have correctly terminated the services of the plaintiff based on the findings and recommendation of a properly constituted first Medical Board, and have thus adhered to the rules as set out under General Service Orders 1/82. This being the case, the plaintiff's alternative claim must also fail.

This Court hereby orders that the plaintiff's claim against the second defendants be also dismissed with costs.

Reported by L Nagarajan